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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-200872; B-200872.4; . DATE: December 8, 1981
B-200955.2

MATTER OF: Architectural Preservation Consultants;
Resource Analysts, Inc.

DIGEST:

1. Where no actual conflict of interest is shown, the fact that one of three agency technical evaluators was an employee of the awardee two years before the procurement does not in itself satisfy protesters' burden of proving bias in favor of awardee.
2. Allegations that agency used undisclosed evaluation criteria to rate proposals are not supported by record which contains evaluation scoring sheets and evaluators' narrative comments that correspond to criteria announced in the solicitations.
3. Although protesters disagree with agency's goals and approach to accomplishing cultural resource surveys, the determination of the Government's needs and the method of accommodating them are primarily the responsibilities of the contracting agencies.
4. GAO will not question a contracting agency's low technical evaluations proposals, resulting in their exclusion from the competitive range, where the record shows that the agency reasonably considered that the proposals reflected a lack of understanding of the agency's needs.
5. Where protests are denied, claims for proposal preparation costs are denied. Also, costs of pursuing protest are not compensable.

Architectural Preservation Consultants (Architectural) and Resource Analysts, Inc. (Resource) protest the award of a contract to Great Lakes Archeological Research Center, Inc. (Great Lakes) under request for proposals number R92-80-18 (RFP-18) issued by the Forest Service, U.S. Department of Agriculture, for the identification and evaluation of logging industry-related cultural resources in the Nicolet National Forest. Resource also protests the award of a contract to Great Lakes under a separate and similar Forest Service solicitation, number R92-80-22 (RFP-22), for a cultural resources survey of Nicolet National Forest.

The protesters allege bias in the technical evaluations in favor of Great Lakes. They also allege that several deficiencies occurred in the way that the two procurements were processed. As a remedy, both protesters request reimbursement of their proposal preparation costs and the costs involved in protesting.

For the following reasons, we find the protesters' contentions to be without legal merit.

ALLEGED BIAS

The protesters assert that one member of a three person panel of Forest Service technical evaluators was biased in favor of Great Lakes. The assertion is based principally on the fact that the evaluator at one time was employed by Great Lakes. The Forest Service concedes that there was an apparent conflict of interest on the part of the challenged evaluator, but stresses that there was no actual conflict of interest. The Forest Service reports:

"The contracting officer was aware of the apparent conflict of interest prior to or during evaluation. [The evaluator was not removed] from the evaluation panel for two reasons. (1) [He] had not worked for Great Lakes for over two years and during that period he had not been used as an evaluator because of the conflict of interest potential. (2) After working for [the Forest Service] for two years he has gained considerable knowledge and experience in the needs and requirements of the Forest Service. This, along with his background knowledge of cultural resource work, was considered valuable expertise for evaluation of these proposals."

The Forest Service also submits that neither the evaluator in question nor members of his family had any interest, financial or otherwise, in Great Lakes at the time of the evaluations or since that time.

The selection of an evaluation panel member is a matter falling primarily within the discretion of the procuring activity, which will not be questioned absent evidence of actual bias. Fox & Company, B-197272, November 6, 1980, 80-2 CPD 340. There is no rule of which we are aware that would prohibit an employee of an agency from participating in the evaluation of a proposal from an offeror by which he previously was employed, so long as the appointing officer is reasonably convinced that no bias exists and there is no actual conflict of interest. We believe that by allowing two years to pass before permitting the former Great Lakes employee to participate in any evaluations of Great Lakes proposals, the Forest Service exercised a reasonable judgment in attempting to avoid any impropriety which otherwise might be apparent, and properly could conclude that the individual would evaluate the proposals fairly.

The protesters have the burden of affirmatively proving actual bias on the part of the evaluator. Unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. See A.R.F. Products, Inc., 56 Comp. Gen. 201, 208 (1976), 76-2 CPD 541. Where, as here, the protesters' only specific support for their allegations of bias is the fact that the evaluator at one time was a Great Lakes employee, they have not sustained the burden of proving actual bias. See Sperry Rand Corporation, 56 Comp. Gen. 312, 319 (1977), 77-1 CPD 77.

In any event, we see no prejudice to the protesters as a result of the questioned evaluator's participation in the procurements. The Forest Service reports that the questioned evaluator's technical evaluations under both solicitations were made independently of the other two members of the panels, thus negating the protesters' suggestion that the former Great Lakes employee could have influenced the other evaluators. Moreover, our review of the numerical evaluation ratings under RFP-18 and the narrative evaluation under RFP-22 shows that when the ratings of the questioned evaluator are excluded, the relative rankings of offerors are not changed and Great Lakes still would receive both awards. See Science Management Corporation, B-193256, April 5, 1979, 79-1 CPD 237.

The protesters also allege that there is a general Forest Service bias in favor of Great Lakes to the extent that all cultural resource survey contracts in a certain region are "set aside" for Great Lakes. Since neither protester has provided probative evidence in support of this claim of general bias, we must view the allegation as mere speculation on their part. Sperry Rand Corporation, supra. Moreover, the Forest Service reports that during the past year Great Lakes was not included in the competitive range in certain procurements for cultural resources surveys for which it submitted proposals.

ALLEGED PROCUREMENT DEFICIENCIES

Both protesters allege that they were evaluated against evaluation criteria and requirements not disclosed in the solicitations. Furthermore, the protesters assert that they unfairly were not allowed to submit best and final offers and that the actual technical evaluation and scoring of their proposals were deficient.

Regarding the allegations that the Forest Service used undisclosed evaluation criteria, it is a basic procurement concept that offerors must be advised of those factors to be used in the evaluation of their proposals. Further, once offerors are informed of the criteria against which their proposals are to be evaluated, it is incumbent upon the procuring agency to adhere to those criteria or inform all offerors of any changes made in the evaluation scheme. Genasys Corporation, 56 Comp. Gen. 835 (1977), 77-2 CPD 60.

The protested solicitations contained the following technical evaluation criteria and assigned points:

RFP-18

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|-----|---|-----------|
| (1) | Understanding of Problem and
Appropriateness and Soundness
of Proposed Approach and Methodology | 50 points |
| (2) | Qualifications and Experience
of Study Team | |
| | (a) Professional Qualifications | 20 points |
| | (b) Experience in Related Work | 20 points |
| (3) | Organizational and Support
Capabilities | 10 points |

RFP-22

- (1) Understanding of Problem and Appropriateness and Soundness of Proposal. 60 points
- (2) Qualifications and Experience of the Study Team. 15 points
- (3) Experience in Related Work. 15 points
- (4) Organizational Capabilities (available support staff and facilities, provisions for curatorial requirements, demonstrated project management capabilities). 10 points

We do not find anything in the record which supports the protesters' assertions that the evaluations were based on criteria other than those published in the RFPs. Our examination of the record shows that comprehensive initial technical evaluations of proposals were made with each member of the technical evaluation panels providing narrative comments and numerical ratings to reflect his or her opinion of the strengths and weaknesses of each proposal on the basis of the evaluation factors set forth in the RFPs. The evaluation scoring sheets used by all evaluators contained topic headings which corresponded exactly to evaluation criteria listed in the RFPs, and the evaluation panel members' narrative comments under each topic heading are reasonably related to that subject. With regard to this allegation, therefore, the protesters' arguments lack merit.

Architectural and Resource protest the fact that they were not afforded the opportunity to submit best and final offers. Discussions in a negotiated procurement, which include the submission of a best and final offer, need only be conducted with an offeror determined by the agency to be within a competitive range. Federal Procurement Regulations § 1-3.805-1(a) (1964 ed.). The record shows that the protesters were not included in the competitive range and therefore were not entitled to an opportunity to submit best and final offers. What the protesters actually object to is their exclusion from the competitive range.

When the numerical technical evaluation ratings were compiled and averaged, proposals under each RFP received the following scores based on a possible 100 maximum points:

RFP-18

Historical	74	
Commonwealth	73	Competitive
Great Lakes	70	Range

Architectural 50
 Resource 40
 (Five other firms submitted offers, and their scores ranged from 37 down to 11)

RFP-22

Great Lakes	82	Competitive
		Range

Resource	48
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Given the substantial difference in scores between the three highest-ranked and the other offerors under RFP-18 and between Great Lakes and Resource under RFP-22, we cannot conclude, based on the raw scores alone, that the Forest Service was unreasonable or arbitrary in establishing competitive ranges which excluded Architectural and Resource. See Joule Technical Corporation, B-197249, September 30, 1980, 80-2 CPD 231 at p. 14.

The protesters, however, argue that the scores used to establish the competitive ranges were based on deficient technical evaluations. In this regard, the determination of the relative desirability of proposals particularly with respect to technical considerations, is primarily a matter for the judgment of the contracting officials. Skyways, Inc., B-201541, June 2, 1981, 81-1 CPD 439. Our function is not to evaluate proposals anew and make our own determinations as to their acceptability or relative merits, but to examine the record and apply a standard of reasonableness to the contracting agency's determinations. The fact that a protester

does not agree with an agency's evaluation of its proposal does not render the evaluation unreasonable. Decilog, B-198614, September 3, 1980, 80-2 CPD 169.

With these principles in mind, we have reviewed the record of evaluations carefully. While the record evidences disagreement over the technical evaluations between the Forest Service and the protesters, for the following reasons we cannot conclude that the Forest Service evaluations were unreasonable.

Architectural

The record shows that the Forest Service believed that Architectural's technical proposal under RFP-18 was deficient particularly in the area of "Understanding of Problem and Appropriateness and Soundness of Proposed Approach and Methodology," the most important technical evaluation criterion. Architectural questions the Forest Service findings primarily based on a belief that it is better qualified than the awardee, Great Lakes, to fulfill the Forest Service requirements as perceived by Architectural. This belief reflects a basic difference of opinion between Architectural and the Forest Service concerning the best method of accomplishing the requirements under RFP-18; Architectural claims that it may be better prepared than the Forest Service to design the Nicolet National Forest survey project.

The statement of work in RFP-18 called for a study to:

"(1) investigate, analyze, and summarize the history of the late 19th - early 20th Century logging in Nicolet National Forest; (2) develop criteria and a methodology for evaluating eligibility of logging industry-related cultural resources for the National Register of Historic Places; (3) test the ability of the proposed criteria and methodology to reasonably distinguish eligible and non-eligible cultural resources; and (4) develop recommendations to further facilitate evaluation of logging industry-related cultural resources in the Nicolet National Forest and other National Forests in Wisconsin, Minnesota and Michigan."

The statement of work further called for field checks in the Nicolet National Forest to develop a logical, practical, and non-destructive way to identify resources worthy of preservation. We believe that the statement

of work reasonably placed prospective offerors on notice that a technically acceptable archeological approach to the cultural resources survey was necessary. In this context, archeology is defined as the study of past phases of the culture of people through objects of human workmanship found in the earth. Webster's Third New International Dictionary 111 (1971).

Architectural's proposal evidenced its belief that a cultural resources survey should be based primarily on historical and architectural methodologies with less emphasis on the archeological aspects of the resources. Contrary to this view, the Forest Service reports that the resources to be surveyed are primarily archeological in nature because the above-surface structures to be studied and surveyed have deteriorated, and physical remains of these resources consist of subtle surface features and buried archeological deposits. For these reasons, the Forest Service considered an offeror's expertise and proposed methodologies in archeology to be very important.

The Forest Service found Architectural's offer technically deficient because:

"The proposal did not demonstrate a clear understanding of the problem. Emphasis on structural documentation and vernacular architecture reflected a proposed methodology centered on evaluation of standing structures. The proposal stated that historic resources whose features are no longer apparent do not retain the integrity required for National Register eligibility. This indicated a lack of sensitivity to historic resources whose significance lies in information contained in the archaeological record. Most, if not all, logging industry-related cultural resources on the Nicolet National Forest and throughout forested areas of the western Great Lakes area are characterized by the absence of above-ground architectural remains. The proposed methodology demonstrated neither a clear understanding of the problem nor a sound approach to evaluation of the specified cultural resources."

Architectural's rebuttal to this evaluation centers on its belief that the archeological approach to this resources survey is incorrect, and that its proposal presented a better method of accomplishing a resources survey. It is, however, a fundamental procurement principle that the determination of the needs of the Government and the methods of accommodating such needs are primarily the responsibilities of the Government's contracting agencies, 38 Comp. Gen. 190 (1958); Manufacturing Data Systems Incorporated, B-180608, June 28, 1974, 74-1 CPD 348. In this case, the Forest Service determined that an approach which emphasized archeology was necessary to meet the agency's needs. It is clear from the record that Architectural's lack of sensitivity to the archeological aspects of the statement of work was the major reason its proposal received lower technical ratings and ultimately was declared unacceptable. As stated above, our Office's role is not to evaluate proposals independently, but rather to review the contracting agency's evaluation to see if it was reasonable. Under the circumstances, we cannot conclude that the Forest Service's exclusion of Architectural from the competitive range lacked a reasonable basis.

Resource

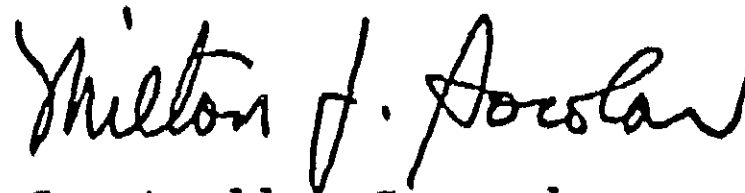
The record indicates that Resource's exclusion from the competitive range under both RFP-18 and RFP-22 was based on Forest Service determinations of technical unacceptability, primarily resulting from low evaluation scores in the most important evaluation categories, those measuring understanding of project objectives. For these categories, Resource received only 12 of a possible 50 evaluation points under RFP-18 and only 21 of a possible 60 evaluation points under RFP-22.

Resource challenges these low evaluations for essentially the same reasons Architectural challenges its low ratings under RFP-18. Like Architectural, Resource believes that the project objectives of the required cultural resource surveys should not be archeological in nature, but rather should be historical investigations. The Forest Service, which wanted an archeological approach to the surveys, found the Resource proposals to be technically unacceptable. In this regard, the statement of work in RFP-22 called for a complete field survey of the forest area for historic and prehistoric cultural resources, which, we believe, reasonably informed offerors that an archeological approach was desired.

As already stated, it is within the province of the procuring agency to establish its needs and the methods to fulfill them. 38 Comp. Gen. 190, supra. We find nothing unreasonable in the Forest Service's determination to exclude Resource from the competitive range under both solicitations for Resource's failure to provide proposals exhibiting an adequate understanding of the Forest Service's cultural resource survey objectives.

CONCLUSION

Based on the foregoing, the protests are denied. Therefore, the proposal preparation cost claims are also denied. Jets, Inc., 59 Comp. Gen. 263, 269 (1980), 80-1 CPD 152. Furthermore, the costs of pursuing a bid protest are not compensable, Bell & Howell Company, 54 Comp. Gen. 937 (1975), 75-1 CPD 273.

for 
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